IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 22529 of 2007(F)

OS.531/2003 of MUNSIFF COURT, PARAVUR

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PETITIONER:

FRANCIS, S/O. KUNNANATTU DEVASSY,
CHIRACKAKAM KARA, VARAPUZHA VILLAGE, PARAVUR.

BY ADV. SRI.SUBHASH CYRIAC

RESPONDENTS:

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1. THOMAS, AGED 50,
S/O. KUNNANATTU DEVASSY, CHIRACKAKAM KARA,
VARAPUZHA VILLAGE, PARAVUR.

2. VARGHESE, AGED 43 OF -DO- -DO-.

3. JONSON, AGED 41 OF -DO- -DO-.

4. MARYKUTTY, AGED 53,
W/O. JOSSY, CHIRAMEL VEEDU, KALAVATH ROAD,
MAMANGALAM, EDAPPILLY P.O.

5. FLOWERY, AGED 51,
W/O. XAVIER, KATTASSERY, HENTRY COLONY,
MAMANGALAM, EDAPPILLY P.O.

6. METTY, AGED 53,
W/O. ANTONY, KURIAPPILLY HOUSE, VALAPPU,
MALIPPURAM.

7. ROSY, AGED 53,
WIDOW OF LATE KUNNANATTU JOSEPH, CHIRACKAKAM,
VARAPPUZHA VILLAGE.

8. VICKAY, AGED 30, D/O.-DO- -DO-.

9. VINOD, AGED 28, S/O. OF -DO- -DO-.

10. MINI, AGED 26, D/O. OF -DO- -DO-.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No. 22529OF 2007

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Dated this the 23rd day of July, 2007

JUDGMENT

This writ petition is filed to set aside Ext.P2 order. A perusal of the order would reveal that there is no dispute for the plaintiff that 5 documents are to be set aside. Further, there is no dispute that the court fee has to be paid under Section 40 of the Court Fees Act. Under section 40 of the Court Fees Act, the court fee to be paid on the market value as on the date of filing of the suit. Learned counsel for the petitioner would contend that it is under Section 7(2) of the said Act. Section 7(2) would convincingly establish that Section 40 does not come within the purview of Section 7(2). It only covers Section 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48. Since the court fee has to be paid under Section 40 of the Court Fees Act and Section 7(2) is not applicable to calculate the market value in that fashion, the market value has to be calculated on the date of filing of the suit and court fee to be paid.

I do not find any error committed by the court below. Therefore the writ petition lacks merit and the same is dismissed. Learned counsel for the petitioner prays some time for making payment of the court fee. The court below is directed to grant six weeks further time to make the deficit payment of court fee and if necessary, amendment of the plaint accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-